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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Lionel L Rowe, as individual,

Plaintiffs,

vs.

WELLS FARGO BANK NATIONAL
ASSOCIATION; DEUTSCHE BANK
NATIONAL TRUST COMPANY, AS
TRUSTEE OF THE MORGAN
STANLEY MORTGAGE LOAN
TRUST 2005-2AR; DAVID
SEYBOLD; NDEX WEST, LLC;;
AND DOES 1-60;
Defendants.

) Case No: **'14CV1128 JAH WVG**

) VERIFIED COMPLAINT FOR:

-) 1. DECLARATORY RELIEF [28
-) U.S.C. §§ 2201, 2202];
-) 2. VIOLATION OF CALIFORNIA
-) BUSINESS AND
-) PROFESSIONS CODE
-) SECTION 17200, ET SEQ.;
-) 3. VIOLATION OF 12 U.S.C. §
-) 1818(b);
-) 4. VIOLATION OF 12 U.S.C. §
-) 1867(c)-(d);
-) 5. 12 U.S.C. § 4631;
-) 6. CANCELLATION OF
-) INSTRUMENTS;

) DEMAND FOR JURY TRIAL

VERIFIED COMPLAINT

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VERIFIED COMPLAINT

I.
JURISDICTION, VENUE AND PARTIES

1. This Court has original jurisdiction over the claims in this action based on Declaratory Relief [28 U.S.C. §§ 2201, 2202], Violation of 12 U.S.C. § 1818(b), Violation of 12 U.S.C. § 1867(c)-(d); 12 U.S.C. § 4631, 28 U.S.C. § 1391(b), and Cancellation of Instruments, which confer original jurisdiction on federal district courts in suits to address the deprivation of rights secured by federal law.¹

2. This Court also has supplemental jurisdiction over the pendant state law claims because they form a part of the same case or controversy under Article III of the United States Constitution, pursuant to 28 U.S. C. § 1367.

3. This Court has original jurisdiction over the claims in this action based on 28 U.S.C. §1332, which confers original jurisdiction on federal district courts in

¹ The Ninth Circuit instructs that in actions brought under 28 U.S.C. § 2201, district courts must first determine whether there is an actual controversy within its jurisdiction by analyzing the factors enumerated in *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942). The *Brillhart* factors require the Court to (1) avoid needless determination of state law issues; (2) discourage litigants from filing declaratory actions as a means of forum shopping; and (3) avoid duplicative litigation. *Brillhart*, 316 U.S. at 495; see also *Schafer v. Citimortgage* No. CV 11-03919, 2011 WL 2437267 (C.D. Cal. June 15, 2011). As held by the court in *Schafer*, This action does not involve a needless determination of state law issues, does not involve forum shopping, and is not duplicative litigation.

1 suits between diverse citizens that involve an amount in controversy in excess of
2 \$75,000.00.

3 4. The unlawful conduct, illegal practices, and acts complained of and alleged
4 in this complaint were all committed in the Southern District of California and
5 involved real property located in the Southern District of California. Therefore,
6 venue properly lies in this District, pursuant to 28 U.S.C. § 1391(b).
7

8 9. Plaintiffs are now, and at all times mentioned herein as individual residing
9 in the County of San Diego, State of California. At all relevant times to this action,
10 Plaintiffs have owned the real property commonly known as 99 Crystal Ln,
11 Mammoth Lakes, California 93543, further described as:
12 Assessor's Parcel Number 560-381-13-00
13
14
15

16 6. The land referred to herein below is situated in County the Mammoth
17 Lakes, State of California, and is described as follows:
18

19 LOT 69 OF MAMMOTH SLOPES UNIT 1 IN THE
20 TOWN OF MAMMOTH LAKES COUNTY OF MONO
21 STATE OF CALIFORNIA, AS PER MAP RECORDED
22 JUNE 18 1964 IN THE BLOCK 4, PAGE 18, 18A AND
23 18B OF MAPS IN THE OFFICE OF SAID COUNTY.
24

25 **II.**
26 **FACTUAL ALLEGATIONS**

27 7. Plaintiff contends that he is the owner of the subject Property; all claims
28

VERIFIED COMPLAINT

1 made herein are based upon the financing and ownership of the Property in the
2 name of Plaintiff, and the subsequent foreclosure and Wrongful conduct.

3 8. Plaintiff executed a promissory note and a Deed of Trust whereas dated
4 November 11, 2004, in the amount of \$510,000.00, payable to "Secured Bankers
5 Mortgage Company." The proceeds of the loan made in exchange for said Note
6 were used to invest to remodel the Subject Property. The Subject Property is a
7 single family dwelling which, at all relevant times, has been occupied by Plaintiff
8 as their residence.
9

10 9. On August 05, 2009, a document entitled "Assignment of Deed of Trust"
11 was recorded against the Property as Document No. 2009003935, It states that
12 MERS, as nominee Secured Bankers Mortgage Company its successors and
13 assigns, herein designated as the Assignor does hereby grant, sell, assign, transfer
14 and set over unto Deutsche Bank National Trust Company, As Trustee of The
15 Morgan Stanley Mortgage Loan Trust 2005-2AR. Herein, Document No.
16 2009003935 was purportedly recorded and signed by David Seybold, as an
17 Assistant Secretary for Mortgage Electronic Registration Systems,
18 Inc." Assignment of Deed of Trust was notarized by Sonia Cardona on July 27,
19 2009, declaring under penalty of perjury that David Seybold, Assistant Secretary
20 had personally appeared and proven that he/she had executed the Assignment of
21 Deed of Trust in his/her authorized capacity.
22
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VERIFIED COMPLAINT

1 10. Document No. 2009003935, was purportedly signed on behalf of
2 Mortgage Electronic Registration Systems, Inc, and signed by David Seybold, as
3 Assistant Secretary for Mortgage Electronic Registration Systems, Inc, The
4 Assignment of Deed of Trust was notarized by Sonia Cardona on July 27, 2009
5 declaring under penalty of perjury that David Seybold Assistant Secretary had
6 personally appeared and proven that he/she had executed the Assignment of Deed
7 of Trust in his/her authorized capacity.
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12 **ALLEGATIONS REGARDING THE TRUST**

13 11. Plaintiff is informed and believes and thereon alleges that the Trust issued
14 the investment bonds in the mortgage-backed Trust identified herein. Said
15 securities were underwritten. Plaintiff alleges that these securities were duly
16 registered with the Securities and Exchange Commission ("SEC") on a registration
17 statement bearing file numbers. The registration statement and other reports and
18 information regarding the Trustee are available at the SEC's Internet site at
19 <http://www.sec.gov>. The materials are also available to read and copy at the SEC's
20 Public Reference Room at JOO F. Street, N.E., Washington, D.C. 20549. However
21 the Assignment of Deed of Trust recorded on August 05, 2009 Document
22 No2009003935 Where as Grants, Assigns to Deutsche Bank National Trust
23 Company, As Trustee of The Morgan Stanley Mortgage Loan Trust 2005-2AR.
24
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1 According to Securities Information from the US SEC EDGAR database for the
2 Morgan Stanley Mortgage Loan Trust 2005-2AR. States as fallows the Current
3 Report on Form 8-K filed by Morgan Stanley Capital I Inc dated as May 26, 2005
4 with respect to Registration Statement No. 333-104283-27 and Pooling and
5 Servicing Agreement by and among Mortgage Pass-Through Certificates, Series
6 2005-2AR., as Depositor, Wells Fargo Bank, National Association, as the Master
7 Servicer, Deutsche Bank National Trust Company, as Trustee.
8
9

10
11 12. In the purported Assignment of the Deed of Trust, the Trust is listed as the
12 holder and owner of the Note Deutsche Bank National Trust Company, As Trustee
13 of the Morgan Stanley Mortgage Loan Trust 2005-2AR.
14

15 13. Plaintiff further believes and upon such belief alleges that the Note was
16 not duly endorsed, transferred and delivered to Deutsche Bank National Trust
17 Company, As Trustee of the Morgan Stanley Mortgage Loan Trust 2005-2AR.
18

19 14. Plaintiff is informed and believes and thereon alleges that the Note in this
20 case was never actually transferred to Deutsche Bank National Trust Company, As
21 Trustee of the Morgan Stanley Mortgage Loan Trust 2005-2AR.
22

23 15. In addition, there is no indication that Plaintiffs loan was transferred into
24 the trust, Morgan Stanley Mortgage Loan Trust 2005-2AR, as it was not listed in
25 any documents filed by the Trust and available to the public at www.edgar.gov.
26
27
28

1 Accordingly, Plaintiff alleges that the Note in this case was never lawfully
2 negotiated and physically delivered to the Trust.

3 16. Plaintiff is informed and believe and thereon alleges that as a direct and
4 proximate result of above, Plaintiff have suffered actual harm in an amount to be
5 determined at trial, including, among other things: severe emotional and physical
6 distress; damaged credit; financial harm; fees and costs.
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10 **THE FABRICATED ASSIGNMENT OF DEED OF TRUST OF DEED OF**
11 **TRUST IS A FRAUDULENT LIEN THAT CONVEYED NO INTEREST TO**
12 **DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF**
13 **THE MORGAN STANLEY MORTGAGE LOAN TRUST 2005-2AR.**
14

15 17. On August 05, 2009, a Document No. 2009003935, purportedly was
16 signed on behalf of MERS, and signed by DAVID SEYBOLD, acting as "Assistant
17 Secretary" The Assignment of Deed of Trust was notarized by SONIA CARDONA
18 on July 27, 2009, declaring under penalty of perjury that DAVID SEYBOLD had
19 personally appeared and proven that he/she had executed the Assignment of Deed
20 of Trust in his/her authorized capacity. The Assignment of Deed of Trust was
21 eventually recorded in the County of Mammoth Lakes on August 05, 2009 Doc
22 No. 2009003935.
23
24
25

26 18. Plaintiff alleges that DAVID SEYBOLD is an individual who simply
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28

1 signs thousands of property record documents without any legal or corporate
2 authority whatsoever.

3 19. These were intentional acts undertaken by Wells Fargo, MERS and
4 Deutsch, done knowingly with the specific intent that the consequences of their
5 actions be brought to fruition, which they have done as evidenced by the instant
6 debt collection activities.
7

8
9 20. This Assignment of Deed of Trust is a fraudulent lien claim and the
10 execution, filing and recordation of the document was created for the purpose of
11 facilitating and aiding and abetting the illegal, deceptive and unlawful collection
12 of Plaintiff' mortgage payments.
13

14
15 21. Plaintiff further alleges that any amount owed under the Note is subject to
16 equitable offset by the actual, consequential, special and punitive damages owed
17 to Plaintiff from Defendants Wells Fargo, MERS and Deutsch. The exact amount
18 is currently unknown, but will be determined upon conducting discovery.
19

20 **THE FABRICATED ASSIGNMENT OF DEED OF TRUST IS A**
21 **FRAUDULENT DOCUMENT THAT CONVEYED NO AUTHORITY TO**
22 **DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF**
23 **THE MORGAN STANLEY MORTGAGE LOAN TRUST 2005-2AR. TO**
24 **ACT AS BENEFICIARY OF THE DEED OF TRUST.**

25 22. On August 05, 2009 a document entitled "Assignment of Deed of Trust"
26 was recorded against the Property as Document No. 2009003935. It states that
27
28

1 MERS, as nominee for Secured Bankers Mortgage Company Inc., its successors
2 and assigns, herein designated as the Assignor does hereby grant, sell, assign,
3 transfer and set over unto Deutsche Bank National Trust Company, As Trustee of
4 the Morgan Stanley Mortgage Loan Trust 2005-2AR. As Beneficiary under said
5 Deed of Trust." However the correct beneficiary is currently unknown, but will be
6 determined upon conducting discovery
7

8
9 23. The Assignment was purportedly signed by "David Seybold as" Assistant
10 Secretary of MERS Nominee for Secured Bankers Mortgage Company.
11

12 24. Plaintiff alleges and believes that David Seybold, Assistant Secretary is a
13 "robo-signer" an individual who simply signs thousands of foreclosure documents
14 without any personal knowledge or authority to do so of the facts to which they
15 attest to, namely that an interest in a negotiable instrument was legally assigned to
16 a purported assignee.
17
18

19 25. As such, David Seybold, Assistant Secretary is not a "Assistant Secretary"
20 for MERS and in fact the Assignment was fraudulently signed without force,
21 effect, and knowledge or authorization from MERS.
22

23 26. Plaintiff alleges that David Seybold, as an Assistant Secretary for MERS
24 was never, in any manner whatsoever, appointed as an "Assistant Secretary" by
25 MERS, and thus giving her no corporate or legal authority from Deutsche Bank
26 National Trust Company, As Trustee of the Morgan Stanley Mortgage Loan Trust
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1 2005-2AR, or the lender's successors and assigns, to execute the purported
2 "Assignment".

3 27. This was an intentional act undertaken by Wells Fargo, Deutsch, and/or
4 NDEX done knowingly with the specific intent that the consequences of their
5 actions be brought to fruition, which they have as evidenced by the instant debt
6 collection activities.
7

8
9 28. The "Assignment" is a fraudulent document and the execution, filing and
10 recordation of the document was created for the purpose of facilitating and aiding
11 and abetting the illegal, deceptive and unlawful collection, and attempts to collect,
12 on Plaintiff's obligation.
13

14
15 29. Accordingly, Lionel L. Rowe contends that no party (other than himself)
16 has right, title or interest in, or claim to, the Note, the DOT, or the Property by
17 which the Note was secured in the DOT that would permit it to enforce the terms
18 of the DOT or Note.
19

20
21 30. In light of the above, Lionel L. Rowe contends that, Wells Fargo, Deutsch
22 and NDEX (collectively "Defendants") wrongfully filed a notice of trustee sale.
23 As a direct and proximate result of above, Lionel L. Rowe has suffered actual harm
24 in an amount to be determined at trial, including, among other things: severe
25 emotional and physical distress; loss of the Property; damaged credit; financial
26 harm; and attorneys' fees and costs.
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28

FIRST CAUSE OF ACTION
DECLARATORY RELIEF; TO DETERMINE STATUS OF
DEFENDANT’S CLAIMS [28 U.S.C. § 2201, 2202]

[As against all Defendants, and all Doe Defendants, inclusive]

31. Plaintiffs hereby incorporate by reference each and every one of the preceding paragraphs as if the same were fully set forth herein. Section 2201(a) of Title 28 of the United States Code states:

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than the actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

32. Section 2202 of Title 28 of the United States Code states:

“Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.”

VERIFIED COMPLAINT

1 Plaintiffs allege that Wells Fargo was not the successor and/or
2 assign of the interests of the original lender Secured Bankers
3 Mortgage Company.

4 Plaintiffs allege that Wells Fargo did not have a secured or
5 unsecured legal, equitable, or pecuniary interest in the lien
6 evidenced by the Deed of Trust and that the purported recorded
7 assignments have no value since they were executed fraudulently
8 and without the authority, direct or indirect, stated or implied, of the
9 current beneficiary of the Note and Deed of Trust.

10 33. Plaintiffs further allege that none of the Defendants is the actual successor
11 in interest to the original Lender Secured Bankers Mortgage Company, with
12 respect to the Note an Deed of Trust, since the Lender sold, transferred or assigned
13 all right title and interest to a third party at some time well prior to the interests
14 purported to be asserted by the Defendants.
15

16
17 34. Defendant Wells Fargo claims they had a secured enforceable interest in,
18 and perfected lien against, the Plaintiffs' Note, Deed of Trust and Property.
19

20 35. Defendant Wells Fargo claims they had standing to obtain all of the rights
21 and benefits under the Note and Deed of Trust to the exclusion of the true
22 Beneficiary.
23

24 36. Plaintiffs allege that Wells Fargo did not have any standing to obtain all
25 of the rights and benefits under the Note and Deed of Trust to the exclusion of the
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1 true beneficiary nor has any claims that they have a secured enforceable interest
2 in, and perfected lien against, the Plaintiffs' Note, Deed of Trust and Property.

3 37. Thus, the competing allegations made by Plaintiffs above establish that a
4 real and actual controversy exists as to the respective rights of the parties to this
5 matter with respect to the claimed interest by the Defendant Wells Fargo to the
6 benefits and rights under the Note and Deed of Trust, and the Plaintiffs' denial that
7 the Defendants had any right, or standing to assert any right, under the Note and
8 Deed of Trust.
9
10
11

12 38. Accordingly, Plaintiffs request the Court make a finding and issue
13 appropriate orders stating that Wells Fargo, Deutsch and NDEX the Doe
14 Defendants had no right or interest in Plaintiffs' Note, Deed of Trust, or the
15 Property; which authorized them, in fact or as a matter of law, to any benefit or
16 right set forth in the Note and Deed of Trust to execute a Security Instrument such
17 as an Assignment that transferred beneficial interest.
18
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20

21 39. Plaintiffs will suffer prejudice if the Court does not determine the rights
22 and obligations of the parties because (1) Plaintiffs will be denied the opportunity
23 to identify and document their true and correct creditor/lender that subsequently
24 deprives Plaintiffs their opportunity to negotiate alternative options to foreclosure;
25 (2) Plaintiffs will be denied the right to conduct discovery and have the claims of
26 Wells Fargo, Deutsch and NDEX verified by a custodian of records who has
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VERIFIED COMPLAINT

1 personal knowledge of the loan and all transactions related to it; (3) Plaintiffs will
2 be denied the opportunity to discover the true amount they still owe minus any
3 illegal costs, fees and charges; (4) Plaintiffs will face dispossession of their family
4 home.
5

6 40. Due to the actual case and controversy regarding competing claims and
7 allegations, it is necessary that the Court declare the actual rights and obligations
8 of the parties and make a determination as to whether the claims of Wells Fargo,
9 Deutsch and NDEX are enforceable and whether they are secured by any right,
10 title or interest in Plaintiffs' Property.
11
12

13 41. Furthermore, the conduct of Wells Fargo, Deutsch and NDEX,
14 Defendants and one or more Doe Defendants, and each of them, as herein
15 described, was so malicious and contemptible that it would be looked down upon
16 and despised by ordinary people. Plaintiffs are therefore entitled to punitive
17 damages in an amount appropriate to punish Defendants and to deter others from
18 engaging in similar conduct.
19
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21

22 **SECOND CAUSE OF ACTION**

23 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION**

24 **17200, ET SEQ.**

25 **[As against all Defendants, and all Doe Defendants, inclusive]**

26 42. Plaintiffs hereby incorporate by reference each and every one of the
27 preceding paragraphs as if the same were fully set forth herein.
28

VERIFIED COMPLAINT

1 43. Defendant's conduct, for the reasons stated herein and fully described
2 above, is in direct violation of Cal. Penal Code Section 532(f)(a)(4), because, as
3 shown and fully described above, the Defendants have caused to be recorded
4 multiple notices with the County Recorder which the Defendants knew and know
5 contain deliberate misstatements, misrepresentations, and omissions.
6

7
8 44. California Business and Professions Code section 17200, et seq., prohibits
9 acts of unfair competition, which means and includes any unlawful, unfair or
10 fraudulent business act and conduct that is likely to deceive and is fraudulent in
11 nature.
12

13 45. As more fully described above, Defendants' acts and practices are
14 unlawful, unfair, and fraudulent, and constitute an attempt to obtain through threats
15 and extortion, the Plaintiffs' property (money and home) under threat of imminent
16 loss of their home. This conduct is ongoing and continues to date.
17
18

19 46. Defendants engage in unfair, unlawful², extortive and fraudulent business
20 practices with respect to mortgage loan servicing and related matters by, among
21 other things:
22
23
24

25 ² "Unlawful" acts or practices are those forbidden by law, be it civil or criminal,
26 federal, state or municipal, statutory, or court-made. *Saunders v. Superior Court*,
27 27 Cal. 4th 832 (1994); *Hewlett v. Squaw Valley*, 54 Cal. 4th 499 (1997).
28

- a. Executing and recording false and misleading documents;³
- b. Executing and recording documents without legal authority to do so (The Assignment signed by “David Seybold” as “Assistant Secretary Loan Documentation” for MERS);
- c. Failing to disclose the principal for which documents were being executed and recorded in violation of Cal. Civ. Code section 1095;
- d. Acting as a beneficiary without the legal authority to do so;
- e. Recording an Assignment on the subject property without the legal authority to do so; and
- f. Other deceptive and coercive practices as described herein.

47. As more fully described above, Defendants’ acts and practices are likely to deceive member(s) of the public.

48. As more fully described above, Defendants acts and practices are unfair and the harm cause by the conduct outweighs any benefits that the conduct may have.

³ Defendants recording of two assignments, a Notice of Default, and a Notice of Trustee Sale violates Cal. Penal Code section 532(f)(a)(4), which prohibits any person from filing a document related to a mortgage loan transaction with the county recorder’s office which that person knows to contain a deliberate misstatement, misrepresentation, or omission. The facts demonstrate that Defendants have committed mortgage fraud by filing said documents with the county recorder’s office with knowledge that the document contained a deliberate misstatement, misrepresentation, or omission of fact.

1 49. Plaintiffs allege that by engaging in the above described acts and/or
2 practices as alleged herein Defendants violate several laws including Cal. Bus. And
3 Prof. Code section 17200, et seq., and must be required to disgorge all profits
4 related to their unfair, unlawful, and deceptive business practices.
5

6 50. As a direct and proximate result of the actions of Defendants, and each of
7 them, stated above, Plaintiffs have been injured in that a cloud has been placed
8 upon title to Plaintiffs' Property.
9

10 51. Defendants have failed to remove this cloud from Plaintiffs' title.
11

12 52. Plaintiffs are entitled to an order compelling Defendant Wells Fargo and
13 MER other defendants or other parties in concert with them claiming an interest in
14 and to the Property to take any and all actions necessary to remove the cloud they
15 have placed upon the Plaintiffs' title.
16

17 53. Furthermore, Plaintiffs are entitled to an order enjoining such Defendants
18 from taking such action in the future against Plaintiffs and Plaintiffs' Property.
19
20
21

22 **THIRD CAUSE OF ACTION**
23 **VIOLATION OF 12 U.S.C. § 1818(b)**

24 **[As against all Defendants, and all Doe Defendants, inclusive]**

25 54. Plaintiffs hereby incorporate by reference each and every one of the
26 preceding paragraphs as if the same were fully set forth herein.
27
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1 55. 12 U.S.C. § 1818(b) Cease-and-desist proceedings states:

2 (1) If, in the opinion of the appropriate Federal banking agency, any
3 insured depository institution, depository institution which has
4 insured deposits, or any institution-affiliated party is engaging or has
5 engaged, or the agency has reasonable cause to believe that the
6 depository institution or any institution-affiliated party is about to
7 engage, in an unsafe or unsound practice in conducting the business
8 of such depository institution, or is violating or has violated, or the
9 agency has reasonable cause to believe that the depository
10 institution or any institution-affiliated party is about to violate, a
11 law, rule, or regulation, or any condition imposed in writing by a
12 Federal banking agency in connection with any action on any
13 application, notice, or other request by the depository institution or
14 institution-affiliated party, or any written agreement entered into
15 with the agency, the appropriate Federal banking agency for the
16 depository institution may issue and serve upon the depository
17 institution or such party a notice of charges in respect thereof. The
18 notice shall contain a statement of the facts constituting the alleged
19 violation or violations or the unsafe or unsound practice or practices,
20 and shall fix a time and place at which a hearing will be held to
21 determine whether an order to cease and desist therefrom should
22 issue against the depository institution or the institution-affiliated
23 party. Such hearing shall be fixed for a date not earlier than thirty
24 days nor later than sixty days after service of such notice unless an
25 earlier or a later date is set by the agency at the request of any party
26 so served. Unless the party or parties so served shall appear at the
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VERIFIED COMPLAINT

1 hearing personally or by a duly authorized representative, they shall
2 be deemed to have consented to the issuance of the cease-and-desist
3 order. In the event of such consent, or if upon the record made at
4 any such hearing, the agency shall find that any violation or unsafe
5 or unsound practice specified in the notice of charges has been
6 established, the agency may issue and serve upon the depository
7 institution or the institution-affiliated party an order to cease and
8 desist from any such violation or practice. Such order may, by
9 provisions which may be mandatory or otherwise, require the
10 depository institution or its institution-affiliated parties to cease and
11 desist from the same, and, further, to take affirmative action to
12 correct the conditions resulting from any such violation or practice.

13 56. Plaintiffs allege that Defendants is engaging or has engaged, or the agency
14 has reasonable cause to believe that the depository institution or any
15 institution-affiliated party is about to engage, in an unsafe or unsound practice
16 in conducting the business of such depository institution, specifically Wells
17 Fargo and Deutsch in transferring beneficial interest in the Assignment.
18
19

20 **FOURTH CAUSE OF ACTION**

21 **VIOLATION OF 12 U.S.C. § 1867(c)-(d)**

22 **[As against all Defendants, and all Doe Defendants, inclusive]**

23 57. Plaintiffs hereby incorporate by reference each and every one of the
24 preceding paragraphs as if the same were fully set forth herein.
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VERIFIED COMPLAINT

1 58. 12 U.S.C. § 1867(c) Services performed by contract or otherwise states:
2 Notwithstanding subsection (a) of this section, whenever a depository institution
3 that is regularly examined by an appropriate Federal banking agency, or any
4 subsidiary or affiliate of such a depository institution that is subject to examination
5 by that agency, causes to be performed for itself, by contract or otherwise, any
6 services authorized under this chapter, whether on or off its premises.
7

8
9 (1) such performance shall be subject to regulation and
10 examination by such agency to the same extent as if such services
11 were being performed by the depository institution itself on its
12 own premises, and

13 (2) the depository institution shall notify each such agency of the
14 existence of the service relationship within thirty days after the
15 making of such service contract or the performance of the
16 service, whichever occurs first.
17

18 59. 12 U.S.C. § 1867(d) Issuance of regulations and orders states:

19 The Board and the appropriate Federal banking agencies are
20 authorized to issue such regulations and orders as may be necessary
21 to enable them to administer and to carry out the purposes of this
22 chapter and to prevent evasions thereof.

23 60. Plaintiffs allege Defendants, specifically Wells Fargo, Deutsch and
24 NDEX has violated the regulations & stipulations ordered to them by the FDIC
25 and the OCC in conducting business that is considered unsafe and unsound.
26

27 **FIFTH CAUSE OF ACTION**

28 **VERIFIED COMPLAINT**

VIOLATION OF 12 U.S.C. § 4631

[As against all Defendants, and all Doe Defendants, inclusive]

61. Plaintiffs hereby incorporate by reference each and every one of the preceding paragraphs as if the same were fully set forth herein.

62. 12 U.S.C. 4631 Cease-and-Desist Proceedings state:

(a) Issuance for unsafe or unsound practices and violations:

(1) Authority of Director:

If, in the opinion of the Director, a regulated entity or any entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or the Office of Finance, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or the Office of Finance or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or entity-affiliated party a notice of charges in respect thereof.

(2) Limitation:

The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart 2 of part B of subchapter I of this chapter, with section 4566 or 4567 of this title, with subsection (m) or (n) of section 1723a of this title, with

1 subsection (e) or (f) of section 1456 of this title, or with paragraph
2 (5) of section 1430 (j) of this title.

3 (b) Issuance for unsatisfactory rating:

4 If a regulated entity receives, in its most recent report of
5 examination, a less-than-satisfactory rating for asset quality,
6 management, earnings, or liquidity, the Director may (if the
7 deficiency is not corrected) deem the regulated entity to be engaging
8 in an unsafe or unsound practice for purposes of subsection (a).

9 (c) Procedure:

10 (1) Notice of charges:

11 Each notice of charges under this section shall contain a statement
12 of the facts constituting the alleged practice or violation and shall
13 fix a time and place at which a hearing will be held to determine on
14 the record whether an order to cease and desist from such practice
15 or violation should issue, unless the party served with a notice of
16 charges shall appear at the hearing personally or by a duly
17 authorized representative, the party shall be deemed to have
18 consented to the issuance of the cease and desist order.

19 (2) Issuance of order:

20 If the Director finds on the record made at such hearing that any
21 practice or violation specified in the notice of charges has been
22 established (or the regulated entity or entity-affiliated party consents
23 pursuant to section 4633 (a)(4) of this title), the Director may issue
24 and serve upon the regulated entity, executive officer, director, or
25 entity-affiliated party an order requiring such party to cease and
26 desist from any such practice or violation and to take affirmative
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1 action to correct or remedy the conditions resulting from any such
2 practice or violation.

3 (d) Affirmative action to correct conditions resulting from violations
4 or activities:

5 The authority under this section and section 4632 of this title to issue
6 any order requiring a regulated entity, executive officer, director, or
7 entity-affiliated party to take affirmative action to correct or remedy
8 any condition resulting from any practice or violation with respect
9 to which such order is issued includes the authority to require a
10 regulated entity or entity-affiliated party—

11 (1) Make restitution to, or provide reimbursement, indemnification,
12 or guarantee against loss, if—

13 (A) Such entity or party or finance facility was unjustly enriched in
14 connection with such practice or violation; or

15 (B) The violation or practice involved a reckless disregard for the
16 law or any applicable regulations or prior order of the Director;

17 (2) To require a regulated entity to seek restitution, or to obtain
18 reimbursement, indemnification, or guarantee against loss;

19 (3) To restrict the growth of the regulated entity;

20 (4) To require the regulated entity to dispose of any loan or asset
21 involved;

22 (5) To require the regulated entity to rescind agreements or
23 contracts;

24 (6) To require the regulated entity to employ qualified officers or
25 employees (who may be subject to approval by the Director at the
26 direction of the Director); and
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1 (7) To require the regulated entity to take such other action as the
2 Director determines appropriate.

3 (e) Authority to limit activities:

4 The authority to issue an order under this section or section 4632 of
5 this title includes the authority to place limitations on the activities
6 or functions of the regulated entity or entity-affiliated party or any
7 executive officer or director of the regulated entity or entity-
8 affiliated party.

9 (f) Effective date:

10 An order under this section shall become effective upon the
11 expiration of the 30-day period beginning on the service of the order
12 upon the regulated entity, finance facility, executive officer,
13 director, or entity-affiliated party concerned (except in the case of
14 an order issued upon consent, which shall become effective at the
15 time specified therein), and shall remain effective and enforceable
16 as provided in the order, except to the extent that the order is stayed,
17 modified, terminated, or set aside by action of the Director or
18 otherwise, as provided in this subchapter.
19

20 63. Plaintiffs allege that Defendants are subject to 12 U.S.C. 4631 as their
21 business practices is unsafe and unsound, specifically Wells Fargo transferring
22 beneficial interest, executed in the Corporate Assignment.
23

24 **SIXTH CAUSE OF ACTION**

25 **CANCELLATION OF INSTRUMENTS**

26 **[As against all Defendants, and all Doe Defendants, inclusive]**
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28

VERIFIED COMPLAINT

1 64. Plaintiffs hereby incorporate by reference each and every one of the
2 preceding paragraphs as if the same were fully set forth herein.

3 65. There is in existence certain written instruments which purport to be:

4 g. “Deed of Trust” recorded as Document No. 2009-003935

5 h. “Assignment of Deed of Trust” recorded as Document No.
6
7 2009003935.

8
9 66. As set forth in detail above, the Defendants has and had no right, title, or
10 interest in the relevant Note and Deed of Trust such that it could enjoy any of the
11 benefits provided under said contracts, including declaring a default, or selling the
12 property.
13

14
15 67. Defendants Wells Fargo, MERS and DEUTSCH has and had no right to
16 undertake the benefits conferred under the Note and Deed of Trust, therefore the
17 execution and recording of the document identified above was without legitimacy,
18 force or effect.
19

20
21 68. If the above documents are not cancelled, the Plaintiffs face the loss of
22 title and possession of his property, additional pecuniary damages, and emotional
23 distress.
24

25 69. Defendant Wells Fargo knew at the time it executed or caused to be
26 executed the above document that it was not entitled to execute same, and that it
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1 had no legitimate, demonstrable, or actual right title or interest in the relevant Note
2 and Deed of Trust, but executed and recorded the documents nonetheless.

3 70. Plaintiffs therefore request the Defendant be ordered to deliver the subject
4 documents to the Clerk for cancellation.
5

6 **WHEREFORE**, Plaintiffs prays as follows:
7

- 8 A. For compensatory, special and general damages in an amount
9 according to proof at trial, but not less than \$75,000.00, against all
10 Defendants and DOES 1 through 60 inclusive;
11 B. For punitive and exemplary damages in an amount to be determined
12 by the Court against all Defendants and DOES 1 through 60 inclusive;
13 C. For an order compelling all Defendants and DOES 1 through 60
14 inclusive to remove any instrument which does not or could be
15 construed as constituting a cloud upon Plaintiffs' title to the Property,
16 including the Assignment, and other document filed with the County
17 Recorder relative to the subject property;
18 D. For an order finding that all Defendants and DOES 1 through 50
19 inclusive have no legally cognizable rights as to Plaintiffs, the
20 Property, Plaintiffs' Promissory Note, Plaintiffs' Deed of trust or any
21 other matter based on contract or any of the documents prepared by
22 Defendants and DOES 1 through 60 inclusive, tendered to and
23 executed by Plaintiffs;
24 E. For the Court to issue an order restraining all Defendants and DOES
25 1 through 60 inclusive, their agents, or employees from continuing or
26 initiating any action against the Property and enjoining Defendants,
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VERIFIED COMPLAINT

1 their agents or employees from doing so during the pendency of this
2 matter;

3 F. For a Declaration of Rights and Obligations as between the Plaintiffs
4 and all Defendants with respect to the Note, Mortgage and Deed of
5 Trust and the subject property that is the subject of this complaint;

6 G. For an order cancelling, rescinding, remanding, and/or voiding
7 Security Instruments such as the Deed of Trust and Assignment.

8 H. For costs of suit incurred herein;

9 I. For costs, fees and Attorney fees where appropriate; and

10 J. For such other and further relief as the Court deems just and proper.
11

12 Jury Demand Attached
13

14
15 Date: May 05, 2014
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18 _____
19 /s/ Joseph La Costa

20 Joseph C. La Costa
21 Attorney for Plaintiff,
22 Lionel L Rowe
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VERIFIED COMPLAINT

VERIFICATION

I, Lionel L Rowe, am the Plaintiff in the above-entitled action. I have read the above Complaint, and I have personal knowledge of the matters stated herein except as to those matters stated upon information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the United States, that the foregoing is true and correct as executed this 05TH day of May 2014, in the City of San Diego, County of San Diego, and State of California.

/s/ Lionel L Rowe

Lionel L Rowe

VERIFIED COMPLAINT

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DEMAND FOR JURY TRIAL

Plaintiff's, Lionel L Rowe hereby demand a trial by Jury on all claims
and issues so triable.

Dated: 05/05/2014

/s/ Lionel L Rowe

Lionel L Rowe

VERIFIED COMPLAINT

LOCAL RULE 5.1(a) CERTIFICATION

By signature below, counsel certifies that the foregoing document was prepared in TIME NEW ROMAN, 14-point font, in compliance with Local Rule 5.1(a).

Date: May 05, 2014

/s/ Joseph La Costa

Joseph La Costa
Attorney for Plaintiff,
Lionel L Rowe